

Decision 16-09-013 September 15, 2016

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Malcolm Mark Bordelon and Elizabeth Pritchett
Bordelon,

Complainants,

vs.

San Jose Water Company (U168W),

Defendant.

(ECP)
Case 16-04-002
(Filed April 5, 2016)

Malcolm Mark Bordelon and Elizabeth Pritchett Bordelon, for
themselves, complainants.

Palle Jensen, Stephen Owens, for San Jose Water Company,
Defendant.

DECISION DENYING COMPLAINT

Summary

This decision denies the request of Elizabeth and Malcolm Bordelon for an adjustment to their January 19, 2016 water bill from San Jose Water Company.

This proceeding is closed.

1. Procedural History and Positions of the Parties

Elizabeth and Malcolm Bordelon (Complainants) filed the above-captioned complaint claiming San Jose Water Company (SJWC) over-billed them for water service at their residence located at 6599 Graystone Meadow Circle in San Jose, California for water service period November 6, 2015 to January 12, 2016. Complaint seeks an adjustment to their January 19, 2016 water bill from SJWC.

Specifically, they request (1) an investigation of why the meter is misreporting and assurance that misreading does not recur, and (2) a reduction of the bill to their prior average bill amount of approximately \$256 (average of their 2015 bills). An evidentiary hearing was held on May 26, 2016.

Complainants contend that SJWC overbilled them for the water usage invoiced in the January 19, 2016 bill. The subject bill was for the amount of \$1,219, but SJWC since gave Complainants a one-time courtesy credit for the drought surcharge of \$562.67.¹ Complainants also made a partial payment of \$250 towards the January 19, 2016 bill as a show of good faith during the pendency of this complaint. This leaves an unpaid balance of \$406.33.

Complainants are husband and wife, with grown children visiting the residence intermittently. Complainants contend they did not use the invoiced amount of water usage of 107 centum cubic feet (ccf) for the billing period covering November 6, 2015 to January 12, 2016. Complainants claim they have no hot tub, pool or any other high water consuming devices. Complainants identified no leaks or water softener issues at the residence. Complainants contend that they did not over-water their lawn. Complainants claim they only watered twice a week in 2015. Complainants contend they made no significant usage change in the winter months preceding the January 19, 2016 bill. Complainants contend that it is illogical and improbable for their household to use that amount for a single billing period. Complainants believe the SJWC meter at their residence is misreading the actual amount of water delivered and used at their residence. Therefore, Complainants seek an investigation of why

¹ The drought surcharge of \$562.67 was triggered during the subject billing period and invoiced on January 19, 2016. The drought surcharges were implemented in June 2015 as approved by the Commission in SJWC's Schedule 14.1.

the meter is misreporting and assurance that misreading does not recur. Complainants request that the January 2016 bill be reduced to their prior average bill amount of approximately \$256 (average of their 2015 bills).

SJWC denies the allegations in the complaint. In its defense, SJWC contends its field investigator performed a field investigation on January 22, 2016. The inspector determined that meter had been read correctly, the bill accurately reflected the water delivered/used at the property, and the billed amount was properly based on the excess usage over the Schedule 14.1 drought allocation. SJWC also claims that its meter test result (average of three highest test results of four tests, excluding the fourth lowest test result, per industry standard) shows that the subject meter performed at 100.05 percent accuracy, well within the Commission's accuracy requirements.² SJWC also explains that this level of inaccuracy (variance of 0.05 percent inaccuracy) does not explain the high usage spike (from 34 ccf in September 14, 2015 bill and 36 ccf in November 12, 2015 bill) to 107 ccf during the subject billing period. Lastly, SJWC contends that Complainants' past usages show that they exceeded and reached similar water usage levels as the current complained usage amount on at least three different prior occasions (July 2014 (81 ccf), September 2014 (111 ccf) and November 2014 (82 ccf).)

In sum, SJWC argues that Complainants argument that they never used such amount of water is unsupported by evidence. SJWC contends that its meter was inspected and tested for malfunction and no malfunctioning was detected, and beyond the meter – the water delivery point – it is Complainants' pipe and

² SJWC contends its meter testing equipment is annually calibrated and certified in compliance with the National Institute of Standards and Technology Handbook 44 by Aver Weigh-Tronix.

responsibility. SJWC therefore argues that Complainants should be held responsible for the payment of the water usage registered and billed (with the one-time courtesy credit of \$562.67 for the drought surcharge). Even with the SJWC's one-time courtesy credit for the drought surcharge of \$562.67 and \$250 in good faith payment to the subject invoice for \$1,219, there remains an unpaid balance of \$406.33.

2. Burden of Proof

California law has long held that the party bringing a claim has the burden of proving that claim.³ The Commission follows this rule in its complaint cases.⁴ This means that Complainants have the burden to prove by a preponderance of the evidence (a majority or 51 percent or more) that their allegations are true.

3. Discussion

General Order (GO) 103-A and Tariff Rule No. 18 establish the Commission's standards and requirements applicable to the issues raised in this complaint. GO 103-A, Section I.2.AB, defines the water meter as the device used for purpose of measuring the quantity of water delivered. The Commission's meter reading, testing and bill error correction standards are set forth in the Tariff Rule No. 18, as required by GO 103-A. GO 103-A, Section IV.3, sets out the meter accuracy requirements. Specifically, the meter may not register at a rate

³ Cal. Evid. Code. Section 500 (2008). *See Sargent Fletcher Inc. v. Able Corp.* (2003) 110 Cal. App. 4th 1658, 1667 (citations omitted.)

⁴ *See In Complaint of Service-All-Tech, Inc. v. PT&T Co.* (Cal. PUC, 1977) 83 CPUC 135, Decision No. 88223 (complaint relating to the disconnection of telephone service where the court found that complainant had the burden of proof and that complainant's "failure to present any evidence present[ed] a total lack of meeting that burden"). *See also Pacific Bell Telephone Company, d/b/a AT&T California vs. Fones4All Corporation* (Cal. PUC, 2008) D.08-04-043, 2008 Cal. PUC LEXIS 132.

more than two percent fast (average of highest three out of four test results); and if the meter is tested and found to be registering more than two percent fast (average of highest three out of four test results), then the remedy is to adjust the bill amount by the adjusted meter reading accounting for the percentage of over-registered water delivery. (Tariff Rule No. 18.B.1).

Here, Complainants have not demonstrated that SJWC improperly charged for water that was not delivered to the subject residence. The meter such as the one at the subject residence is triggered by pressure change at the customer's location (e.g., faucet being turned on, toilet being flushed, etc.). Once the pressure changes at the customer's location, that pressure change triggers the water delivery and the meter registers the amount of water delivered through it.

There was no evidence that this pressurized meter malfunctioned and incorrectly registered delivery of more water than what was actually used at the customers' residence. The result of the meter tests show that the meter was operating within 100.05 percent accuracy which complies with the Commission's accuracy requirements under Tariff Rule No. 18 and GO 103-A. American Water Work Association Standard provides that SJWC should take three highest flow results and then take algebraic average which equals 100.05 percent. The meter was found to be over-registering by 0.05 percent (and far less than the 2 percent) to trigger overcharge refund /credit provision. In addition, that 0.05 percent over-registering would not even begin to account for the high usage during the subject billing period. No other evidence was presented to show that the meter reading of the water usage for the subject billing period was erroneous.

Complainants presented excel presentations and charts illustrating their 2015 usage (based on invoiced dollar amounts and gallons delivered/used) versus 2016 usage to date. Following the January 19, 2016 water bill,

Complainants' two subsequent water bills were for \$139 and \$135. This shows that the high usage reflected on the January 19, 2016 bill is not continuing and the level of use has considerably dipped below the usage levels prior to the subject billing period. There has been no further usage spike at the customers' location.

Evidence shows the usage level at the subject residence dropped to pre-spike level after one billing period without any detection or repair of identified leaks. This shows that leakage at the customer location is not the cause of the high usage during the subject billed cycle. The evidence here shows the amount of the water usage billed (which was based on the meter reading for the subject billing period) was most likely accurate. For these reasons, the requests for further investigation and credit are denied.⁵

4. Exemption from Comment Period

This is an expedited complaint proceeding and pursuant to Rule 14.7(b) of the Commission's Rules of Practice and Procedure, no 30-day public review and comment period is required.

5. Assignment of Proceeding

Carla J. Peterman is the assigned Commissioner and Kimberly H. Kim is the assigned Administrative Law Judge in this proceeding.

⁵ The only remaining issue and the request being denied here is the request for the credit of unpaid balance of \$406.33.

O R D E R

IT IS ORDERED that:

1. The Complaint of Elizabeth Bordelon and Malcolm Bordelon is denied.
2. Case 16-04-002 is closed.

This order is effective today.

Dated September 15, 2016, 2016, at San Francisco, California.

MICHAEL PICKER

President

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

LIANE M. RANDOLPH

Commissioners

Commissioner Carla J. Peterman, being
necessarily absent, did not participate.